

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**GUIDANCE ON PROPER PROCEDURE
FOR DISPOSITION OF ADVERSARY PROCEEDINGS**

Recurring problems with the disposition of adversary proceedings have been noted by the Court and prompt the issuance of this memorandum. Subject to the special requirements for actions seeking denial or revocation of discharge or proposed settlements involving a trustee, an adversary proceeding that does not go to trial or result in default judgment can be concluded in one of several ways:

Notice of Dismissal. Fed.R.Bankr.P. 7041 permits the plaintiff to withdraw a complaint, prior to a defendant's filing of an answer or motion for summary judgment, by filing a notice of dismissal. The notice of dismissal concludes the adversary proceeding, with no further order from the Court. If a defendant has answered or moved for summary judgment, the plaintiff cannot use the notice of dismissal to terminate the adversary proceeding but instead must file either a stipulation of dismissal or a motion to dismiss. The plaintiff's motion to dismiss after defendant's answer or summary judgment request requires notice to the other parties in the adversary proceeding and a Court order granting the motion. See Fed.R.Civ.P. 41(a)(2).

Stipulation of Dismissal. Fed.R.Bankr.P. 7041 also permits the parties to file a stipulation of dismissal. This stipulation ~~also~~ concludes the adversary proceeding, with no further Court order. (A stipulation of dismissal should contain no conditions precedent or subsequent, as that would more properly be an "agreed judgment.") A "joint motion to dismiss" should be filed as a stipulation of dismissal. Again, if the stipulation of dismissal includes conditions precedent or subsequent, it should be filed as an agreed judgment.

Agreed Judgment. It is presumed that the parties want any agreement resolving the adversary proceeding to have the same effect as a judgment. Fed.R.Bankr.P. 9021 requires that "every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate

document.” Therefore, the proper procedure is for the parties to file the agreed judgment. Agreed judgments should comply with the Court’s requirements in the notice of October 17, 2006. In particular, the document should not contain order language or a place for the judge’s signature. A separate order approving the agreed judgment should be submitted. See below for discussion of the additional requirements governing settlements of actions under §727 or settlements with trustees.

Complaints to Deny or Revoke Discharge. Fed.R.Bankr.P. 7041 and S.D.Ind. L.R. B-7041-2 add special requirements for disposition of complaints to deny or revoke discharge under 11 U.S.C. §727. Any dismissal must be served on parties in accordance with the local rule.

While the local rule on its face may be unclear, it was intended to apply to notices of dismissal. A notice of dismissal or stipulation of dismissal, if properly served in accordance with the local rule on the trustee, United States Trustee, and counsel of record in the bankruptcy case, will be held for twenty days. Parties receiving notice of the dismissal have an opportunity to object during that time. If no objection is filed, the adversary proceeding is closed. Any agreed judgment (other than a settlement with the case trustee, which is discussed below) must also be properly served and the order approving same will not be entered until the twenty-day objection period has passed.

Settlements with Trustees. Fed.R.Bankr.P. 9019 and S.D.Ind. L.R. B-9019-1 establish additional requirements for settlements with trustees or debtors-in-possession - which would include settlements of complaints to deny or revoke discharge. These requirements also apply to causes of action which are property of the estate but which are being pursued by an entity other than the trustee, such as a fraudulent conveyance action brought by the creditors’ committee.

Notice and opportunity for hearing on such settlements are required. The proper procedure is to file a motion to compromise and settle in the legal case, not the adversary proceeding. That pleading should only have the legal caption, as the body of the motion should contain the adversary proceeding information necessary to generate an appropriate notice. Noticing will then occur in the legal case. If no objection is filed, or if any

objection is overruled, the Court will grant the motion in the legal. At that point the parties in the adversary proceeding will file in the adversary proceeding a notice of dismissal, stipulation of dismissal, or agreed judgment - whatever is appropriate under the circumstances - pursuant to Fed.R.Bankr.P. 7041.

April 27, 2007

Kevin P. Dempsey
Clerk